

Chapter 831 AMUSEMENT MACHINE LOCATIONS*

***Editor's note:** G.O. 51, 2001, §§ 1, 2, adopted June 4, 2001, states that G.O. 138, 1996 and G.O. 183, 1997 is amended by the deletion of the expiration date of July 1, 2001 and July 1, 2002, respectively, as provided in section 16 and section 29, respectively, thereof. It is the intent of this ordinance that the provisions of G.O. 138, 1996 and G.O. 183, 1997 which amended the "Municipal Code of Indianapolis and Marion County, Indiana" and the "Revised Code of the Consolidated City and County" shall not expire, but shall remain in full force and effect, and as they may have been amended, renumbered, or recodified since the effective date thereof.

Cross references: Adult entertainment establishments, ch. 807; dance permits and licenses, ch. 881.

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Sec. 831-1. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section.

Accompanied by means, for purposes of subsections 831-5(h), 831-5(i), 831-5(j), 831-6(f), 831-6(g), and 831-6(h), means that the parent, guardian, or custodian of the minor either:

- (1) Is within five (5) feet of the minor at all times while the minor is operating the amusement machine; or,
- (2) Has appeared in person with the minor at the amusement location or place of business containing amusement machines on that day and has given his or her permission for the exhibitor or registrant or an employee of the exhibitor or registrant to place on the back of the minor's hand or wrist a clearly visible, non-transferable designation such as a stamp or wrist band signifying that the parent, guardian, or custodian has consented to allow the minor to operate amusement machines that are harmful to minors.

Amusement location means any public room or area in the city which contains five (5) or more amusement machines; however, amusement locations shall not include premises which are licensed (as defined in IC 7.1-1-3-20) for the sale of alcoholic beverages and where entry is limited to persons who are eighteen (18) years of age or older.

Amusement machine means a currency-operated machine or device, including a machine or device operated by tokens, cards, points, or other currency-like means, offered to the public as a game or amusement, the object of which is to achieve a high or low score based on the skill of the player, including, but not limited to, video games, pool or billiard tables and pinball machines. Such a machine or device designed and used exclusively for the vending of merchandise of a tangible nature shall not be deemed an amusement machine.

Exhibitor means a person who owns or operates a place of business in the city where four (4) or fewer amusement machines are located; however, the provisions of this chapter shall not apply to an exhibitor's place of business which is licensed (as defined in IC 7.1-1-3-20) for the sale of alcoholic beverages and where entry is limited to persons who are eighteen (18) years of age or older.

Graphic violence means an amusement machine's visual depiction or representation of realistic serious injury to a human or human-like being where such serious injury includes amputation, decapitation, dismemberment, bloodshed, mutilation, maiming or disfiguration.

Harmful to minors means an amusement machine that predominantly appeals to minors' morbid interest in violence or minors' prurient interest in sex, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for persons under the age of eighteen (18) years, lacks serious literary, artistic, political or scientific value as a whole for persons under the age of eighteen (18) years, and:

- (1) Contains graphic violence; or,
- (2) Contains strong sexual content.

Incidental view means a minor's view for fewer than thirty (30) seconds of the playing surface or screen of an amusement machine.

Knowingly means having general knowledge of, or reason to know, or a belief or ground for belief that warrants further inspection or inquiry of both:

- (1) The character and content of the visual representations of the amusement machine; and,
- (2) The age of the person operating or seeking to operate the amusement machine, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt (including but not limited to asking for legal photo identification) to ascertain the true age of the minor.

Minor means a person under the age of eighteen (18) years. This definition does not apply to a minor who has obtained a court decree pursuant to IC 31-34-20-6.

Not harmful means an amusement machine that is not harmful to minors.

Nudity means an amusement machine's visual depiction or representation of human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or of a female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

Parent, guardian or custodian means and includes a person who has legal custody of the minor and is the minor's:

- (1) Natural parent;
- (2) Stepparent, adoptive parent or custodian as those terms are defined by IC 35-42-4-7;
- (3) Guardian as defined by IC 29-3-1-6; or
- (4) Other adult who has been appointed by a court to care for a minor;

but, for purposes of subsections 831-5(e), 831-5(f) and 831-5(g) and subsections 831-6(c), 831-6(d) and 831-6(e), shall not include an exhibitor, or owner or operator of an amusement location with respect to a minor who is present in the exhibitor's, owner's or operator's place of business.

Pool or billiard table means a table used for any form of the games commonly referred to as pool or billiards and includes any table of any size, the top of which is surrounded by an elastic ledge or cushion and which is designed or used to play any game which consists of impelling balls by means of sticks or cues.

Public property means all buildings and areas within Marion County that are owned, operated, or leased as lessee, by the City of Indianapolis, Marion County, a city or county department, a city-county agency, or a township, including but not limited to the Department of Parks and Recreation, but does not include property for which the City of Indianapolis, Marion County is the lessor.

Registrant in this chapter means a person registered with the controller under this chapter as the owner or operator of an amusement location in the city.

Strong sexual content means the visual depiction or representation by an amusement machine of nudity or explicit human sexual behavior by any human or human-like being in one or more of the following forms: Masturbation; deviate sexual conduct; sexual intercourse; or, fondling of genitals.

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 72, 2000, § 1)

Sec. 831-2. Registration required; fee.

(a) It shall be unlawful for a person to own or operate an amusement location in the city unless the amusement location first is registered with the controller. The registrant under this chapter shall be the operator or business owner of the amusement location.

(b) The annual fee for registration of an amusement location shall be twenty dollars (\$20.00).

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 87, 2004, § 3)

Sec. 831-3. Registration information required; investigation of applicant; report of changed information.

(a) The registration of an amusement location shall be filed with the office of finance and management on a form provided by that office, contain the following information, and be verified and signed individually by the registrant:

(1) The name of the registrant and, if a partnership or corporation, the state in which organized;

(2) The residence address of registrant;

(3) The business address of registrant;

(4) The name, age and citizenship of the registrant, if an individual; of all partners, if the registrant is a partnership or joint venture; or of the manager and officers, if the registrant is a corporation; and

(5) A description of each amusement machine in the amusement location, including the manufacturer, serial number, and name of the owner of each amusement machine.

(b) Before a certificate of registration is issued, the controller shall investigate the character of the registrant or registrants, and the officers or general manager of the business. The registration may be denied if the controller finds that any of the persons named in the registration previously have been convicted of a felony, connected with any amusement location where any of the provisions of the law applicable to such persons have been violated.

(c) If there is any change in the registrant's business during the term of the registration such that the information provided in the application form is no longer complete or accurate, including the addition or removal of an amusement machine in the amusement location, then the registrant shall:

(1) Notify the controller in writing within ten (10) days after such change occurs; and

- (2) Retain a copy of each written notice throughout the term of the registration.

Failure to comply with this subsection shall be a violation of the Code.

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 73, 2005, § 43)

Sec. 831-4. Registration term and renewal; certificate of registration.

(a) Registrations of amusement locations shall be valid for the period of one (1) year, from July first to June thirtieth, and shall be renewed automatically by the controller and without application for renewal by the registrant, unless at the time of renewal:

(1) The registration has been revoked or suspended;

(2) The registration is the subject of administrative or judicial proceedings which have the potential to result in the revocation or suspension of the registration, in which case the registration may continue in effect until the conclusion of the administrative or judicial proceedings; or

(3) The registrant has not paid the registration fee for the following year.

(b) When an amusement location is registered, the controller shall issue to the registrant a certificate of registration.

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 87, 2004, § 4)

Sec. 831-5. Operation of amusement locations; violations.

(a) All amusement locations shall be kept in a clean, healthful and sanitary condition at all times and the controller shall have the power to determine if such room or rooms are kept in a clean, healthful and sanitary condition and for such purpose, when desired, have the assistance of any law enforcement agency or the Health and Hospital Corporation of Marion County. If the controller shall determine, by a law enforcement agency or the division of buildings of the Health and Hospital Corporation of Marion County, that an unsanitary condition exists within an amusement location or on property immediately adjacent to the amusement location, which property is under the control of the amusement location owners or their lessee or lessor, the controller shall have the power to suspend the amusement location registration until such unsanitary condition is rectified.

(b) No registrant under this chapter shall permit persons to congregate in a disturbing manner within an amusement location or on parking areas or other property immediately adjacent to or normally used for purposes of parking for an amusement location which property is under the control of the amusement location owner or owners or their lessee or lessor. A violation of this provision shall be sufficient grounds for the revocation of the amusement location registrations by the controller.

(c) No registrant under this chapter, or registrant's employee, shall violate any state statute or city ordinance, or allow any other person to commit such violation, within an amusement location or on parking areas or other property immediately adjacent to or normally used for purposes of parking for an amusement location which property is under the control of the amusement location owner or owners or their lessee or lessor. A violation of this provision shall be sufficient grounds for the revocation of the amusement location registrations by the controller.

(d) All employees of a registrant under this chapter shall be eighteen (18) years of age or older.

(e) It shall be unlawful for a person to allow a minor under sixteen (16) years of age who is subject to the compulsory school attendance laws of the state and who is not accompanied by the minor's parent, guardian or custodian to be present in an amusement location between the hours of 7:00 a.m. and 3:30 p.m. on a day when such minor's school is in session.

(f) It shall be unlawful for a person to allow a minor to be present in an amusement location after the hours established by state statute or city ordinance for juvenile curfew unless such minor is accompanied by the minor's parent, guardian or custodian, or an adult specified by the minor's parent, guardian or custodian.

(g) It shall be unlawful for a person to operate an amusement location unless a sign is conspicuously posted inside the location which provides that no minor under sixteen (16) years of age may be present in an amusement location between the hours of 7:00 a.m. and 3:30 p.m. on a day when the minor's school is in session unless accompanied by the minor's parent, guardian or custodian, and that no minor may be present in an amusement location in violation of the curfew established by state statute or city ordinance.

(h) It shall be unlawful for a registrant, a registrant's agent, or an employee of an amusement location knowingly to allow a minor who is not accompanied by the minor's parent, guardian or custodian to operate in the amusement location an amusement machine that is harmful to minors.

(i) It shall be unlawful for a registrant to operate an amusement location unless each amusement machine that is harmful to minors in the amusement location displays a conspicuous sign indicating that the machine may not be operated by a minor under eighteen (18) years of age unless the minor is accompanied by his or her parent, guardian, or custodian. If amusement machines that are harmful to minors are displayed together in an area separate from amusement machines that are not harmful, a single conspicuous sign in that area or at the entrance to that area may be used to mark the group of machines for purposes of this subsection.

(j) It shall be unlawful for a registrant to make available to patrons any amusement machine that is harmful to minors within ten (10) feet of an amusement machine that is not harmful. It shall further be unlawful for a registrant not to separate amusement machines that are harmful to minors from other machines by some form of partition, divider, drape, barrier, panel, screen, or wall that completely obstructs the view of persons outside the partitioned area of the playing surface or display screen of the machines that are harmful to minors. It shall be unlawful for a registrant, registrant's agent, or employee of an amusement location to allow a minor who is not accompanied by his or her parent, guardian, or custodian into the partitioned area.

(k) It shall be unlawful for a registrant to make available to patrons any amusement machine that is harmful to minors if the registrant has been cited for three (3) or more violations of section 831-5(h), (i), (j), or (k) of this Code in any 12-month period in the preceding three (3) years.

(l) One or more violations of section 831-5(h), (i), (j), or (k) of this Code may serve as grounds for suspension or revocation of the amusement location's registration, pursuant to the authority vested in the controller and procedures prescribed in chapter 801 of this Code. Three (3) or more violations of section 831-5(h), (i), (j), or (k) of this Code, however, shall require revocation of the amusement location's registration, subject to the notice and hearing requirements of chapter 801. For the purposes of this subsection, no more than one (1) violation shall be deemed to have occurred on any one (1) day.

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 72, 2000, § 2)

Sec. 831-6. Operation of amusement machines by exhibitors; violations.

- (a) No exhibitor or exhibitor's employee shall permit persons to congregate in a disturbing manner on the premises of the exhibitor's place of business.
- (b) No exhibitor or exhibitor's employee shall violate any state statute or city ordinance, or allow any other person to commit such violation on the premises of the exhibitor's place of business.
- (c) It shall be unlawful for an exhibitor or the exhibitor's employee to allow a minor under sixteen (16) years of age who is subject to the compulsory school attendance laws of the state and who is not accompanied by the minor's parent, guardian or custodian to operate an amusement machine in the exhibitor's place of business between the hours of 7:00 a.m. and 3:30 p.m. on a day when such minor's school is in session.
- (d) It shall be unlawful for an exhibitor or the exhibitor's employee to allow a minor to operate an amusement machine in the exhibitor's place of business after the hours established by state statute or city ordinance for juvenile curfew unless such minor is accompanied by the minor's parent, guardian or custodian, or an adult specified by the minor's parent, guardian or custodian.
- (e) It shall be unlawful for an exhibitor to have amusement machines in his or her place of business unless a sign is conspicuously posted near any amusement machines which provides that no minor under sixteen (16) years of age may operate an amusement machine between the hours of 7:00 a.m. and 3:30 p.m. on a day when the minor's school is in session unless accompanied by the minor's parent, guardian or custodian, and that no minor who is in violation of the curfew established by state statute or city ordinance may operate an amusement machine.
- (f) It shall be unlawful for an exhibitor, an exhibitor's agent, or an exhibitor's employee knowingly to allow a minor who is not accompanied by the minor's parent, guardian or custodian to operate in the exhibitor's place of business an amusement machine that is harmful to minors.
- (g) It shall be unlawful for an exhibitor to make available to patrons in his or her place of business amusement machines that are harmful to minors unless each amusement machine that is harmful to minors displays a conspicuous sign indicating that the machine may not be operated by a minor under eighteen (18) years of age unless the minor is accompanied by his or her parent, guardian, or custodian. If amusement machines that are harmful to minors are displayed together in an area separate from amusement machines that are not harmful, a single conspicuous sign in that area or at the entrance to that area may be used to mark the group of machines for purposes of this subsection.
- (h) It shall be unlawful for an exhibitor to make available to patrons any amusement machine that is harmful to minors within ten (10) feet of an amusement machine that is not harmful. It shall further be unlawful for an exhibitor, exhibitor's agent, or exhibitor's employee to allow a minor who is not accompanied by his or her parent, guardian, or custodian to view, with the exception of an incidental view, the playing surface or screen of a game that is harmful to minors.
- (i) It shall be unlawful for an exhibitor to make available to patrons any amusement machine that is harmful to minors if the exhibitor has been cited for three (3) or more violations of section 831-6(f), (g), (h), or (i) of the Code in any 12-month period in the preceding three (3) years.

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 72, 2000, § 3)

Sec. 831-7. Harmful games on public property.

It shall be unlawful for an registrant or exhibitor to make available on public property any amusement machine that is harmful to minors.

(G.O. 72, 2000, § 4)

Sec. 831-8. Inspections; report of violations.

It shall be the duty of every law enforcement officer, and all persons designated by the chief of police, county sheriff and controller, to make frequent inspections of all amusement locations, and amusement machines, and if any gaming, improper or unlawful practices are observed to report the same to the chief of police or county sheriff for proper action and also to the controller, who thereupon may recommend proceedings to revoke the registration.

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 72, 2000, § 5)

Sec. 831-9. Enforcement and penalties.

A person who violates any provision of this chapter shall be punishable as provided in section 103-3 of the Code; provided, however, the fine imposed for such violation shall not be less than two hundred dollars (\$200.00), that for the purpose of assessing fines no more than one (1) violation shall be deemed to have occurred on any one (1) day, and that each day that an offense continues shall constitute a separate violation. The fines assessed for violations of this chapter shall be deposited with the lawenforcement agency that caused the violation to be filed, if any.

(G.O. 138, 1996, § 5; G.O. 183, 1997, § 12; G.O. 72, 2000, § 6)